



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 13, 2023

IN THE MATTER OF:

Appeal Board No. 628921 A

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 628920 A, 628921 A and 628922 A, the claimant applied to the Appeal Board pursuant to Labor Law § 534 for a reopening and

reconsideration of the decisions of the Appeal Board, filed March 9, 2023, which affirmed the decisions of the Administrative Law Judge filed December 5, 2022, insofar as the decisions sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 16, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; and charging the claimant with an overpayment of \$10,250.00 in regular unemployment insurance benefits and \$7,790.00 in Extended (EB) benefits recoverable pursuant to Labor Law § 597

(4), Federal Pandemic Unemployment Compensation (FPUC) benefits of \$18,600.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$11,992.50 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and Lost Wages Assistance (LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and sustained the initial determination reducing the claimant's right to receive future benefits by 360 effective days and charging a civil penalty of \$7,294.87 on the basis that the claimant made willful misrepresentations to obtain benefits, as modified to impose a forfeit penalty of 352 effective days and a civil penalty in accordance with the decision and referred the amount of the civil penalty to the Department of Labor for recalculation.

In Appeal Board Nos. 628923 A, 628924 A and 628925 A, the claimant applied to the Appeal Board pursuant to Labor Law § 534 for a reopening and

reconsideration of the decisions of the Appeal Board, filed March 9, 2023, which affirmed the decisions of the Administrative Law Judge filed December 5, 2022, insofar as the decisions sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 2, 2021 through August 8, 2021, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$300.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$410 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$106.50 on the basis that the claimant made a willful misrepresentation to obtain benefits.

Upon consideration of the application to reopen, after due notice to the parties, and the written statement submitted on behalf of the claimant, the Board has decided to reopen and reconsider its decision.

The Board makes the following:

**FINDINGS OF FACT:** The claimant had two jobs. Her primary language is Spanish and she does not speak, read or understand English well. After losing one of her two jobs, the claimant filed a claim for benefits on May 5, 2020, effective March 9, 2020. The claimant initially filed her claim in Spanish and chose Spanish as her preferred language. The selection of the preferred language determines the language in which documents are sent to a claimant but does not set the default language for certifications as the preferred language.

From March 16, 2020 through September 5, 2021, the claimant worked for her remaining employer as a home attendant. Her days worked and pay were as follows:

Week Ending  
Days worked  
Earned over \$504  
Week Ending

Days worked  
Earned over  
\$504

Week Ending  
Days worked  
Earned over  
\$504

3/22/2020

4+

N

9/20/2020

Y

3/21/2021

Y

3/29/2020

Y

9/27/2020

Y

3/28/2021

Y

4/5/2020

Y

10/4/2020

Y

4/4/2021

21-30

hrs

N

4/12/2020

Y

10/11/2020

Y  
4/11/2021

Y  
4/19/2020

Y  
10/18/2020

Y  
4/18/2021

Y  
4/26/2020

Y  
10/25/2020

Y  
4/25/2021  
21-30  
hrs  
N  
5/3/2020

Y  
11/1/2020

Y  
5/2/2021

Y  
5/10/2020

Y  
11/8/2020

Y  
5/9/2021

Y  
5/17/2020

Y  
11/15/2020

Y  
5/16/2021

Y  
5/24/2020

Y  
11/22/2020

Y  
5/23/2021

Y  
5/31/2020

Y  
11/29/2020

Y  
5/30/2021

Y  
6/7/2020

Y  
12/6/2020

Y  
6/6/2021

Y  
6/14/2020

Y

12/13/2020

Y

6/13/2021

Y

6/21/2020

Y

12/20/2020

Y

6/20/2021

Y

6/28/2020

Y

12/27/2020

Y

6/27/2021

Y

7/5/2020

4+

N

1/3/2021

Y

7/4/2021

Y

7/12/2020

Y

1/10/2021

4+

N

7/11/2021

21-30  
hrs  
N  
7/19/2020

Y  
1/17/2021  
3  
N  
7/18/2021

Y  
7/26/2020

Y  
1/24/2021

Y  
7/25/2021  
21-30  
hrs  
N  
8/2/2020

Y  
1/31/2021

Y  
8/1/2021

Y  
8/9/2020

Y  
2/7/2021

Y  
8/8/2021  
0  
N

8/16/2020

Y

2/14/2021

Y

8/15/2021

21-30 hrs

N

8/23/2020

Y

2/21/2021

Y

8/22/2021

Y

8/30/2020

Y

2/28/2021

Y

8/29/2021

Y

9/6/2020

Y

3/7/2021

21-30 hrs

N

9/5/2021

Y

9/13/2020

Y

3/14/2021



Y

During the week ending August 8, 2021, the claimant took a vacation of five days.

The claimant certified for benefits online. When certifying for benefits each week from the statutory week ending May 3, 2020 through the week ending March 14, 2021, the claimant was presented with the certification screens in English. During that time, through March 14, 2021 when she certified for the week ending March 14, 2021, she certified in English and used an application called Google Translate to translate

the questions into Spanish. She then provided the responses in English. She did not know how to change the screens to present the questions in Spanish.

On May 12, 2020, the claimant also completed a form to certify for six weeks from the week ending March 22, 2020 through the week ending April 26, 2020. The certification form was provided to her only in

English. She was asked for each week to indicate whether she was eligible for benefits or not eligible for benefits for those weeks, with information on the form that eligible, among other things, meant that she did not work any day, including self-employment, and did not earn more than \$504 excluding self-employment. The claimant again used the Google Translate application to translate the document and she certified for those six weeks that she was eligible for those weeks because she had applied for benefits based on the job she had lost.

From the week ending May 3, 2020 through the week ending January 17, 2021 she was asked in English how many days she had worked and if she had earned over \$504 in the week for which she was certifying. From the week ending January 24, 2021 through the week ending March 14, 2021, she was asked in English to select how many days she had worked during the prior week based on selecting the number of hours she had worked during the week. She was also asked if she had earned more than \$504 during the week.

On or around March 14, 2021, the claimant's benefit year ended and she filed a subsequent claim for benefits in English. It was determined that she was not entitled to file a new claim, so the Department of Labor put her back on her

claim that was effective March 9, 2020. After that, from the week ending March 21, 2021 through the statutory week ending September 5, 2021, when certifying for benefits, the claimant was presented with certification screens in Spanish. Each week she was asked to select how many days she had worked based on selecting the number of hours she had worked during the week. She was also asked if she had earned more than \$504 during the week.

For all weeks, the claimant certified that she had worked zero days and that she did not earn over \$504. She indicated zero days of work because she thought it applied to the job she had lost, for which she had only worked six hours per week previously, and she thought information about her work with her current employer was already in the Department of Labor system. In addition, she certified that she had not earned over \$504 because she thought the question was asking about the unemployment benefits she had received and because she got confused with that question.

As a result of these certifications, the claimant received \$10,250 in regular unemployment insurance benefits, \$7,790 in extended benefits, \$18,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits, \$11,992.50 in Pandemic Emergency Unemployment Compensation (PEUC) benefits and \$1,800 in Lost Wages Assistance (LWA) benefits.

When the claimant certified for the statutory week ending August 8, 2021, she was asked how many days she had not been ready, willing and able to work. The claimant certified that she was unavailable on zero days that week. As a result of her certification for this week, she received \$300 in FPUC benefits and \$410 in PEUC benefits.

OPINION: The credible evidence establishes that the claimant was not totally unemployed for three days in each of the weeks ending January 17, March 7, April 4, April 25, July 11, July 25, and August 15, 2021. In addition, she was not totally unemployed for entire week and/or could not accumulate effective days because her earnings exceeded the statutory limit for each of the remaining weeks in issue. The claimant admitted to having worked for her remaining employer for the days specified, and her attorney stipulated to the same. We,

therefore, conclude that the claimant lacked total unemployment for the days and weeks in issue and that the benefits that the claimant received were overpaid.

The credible evidence further establishes that when the claimant certified for benefits during the entire period in issue, she certified that she had worked zero days during each week and had not earned over \$504 during each week. In this regard, she conceded that she was asked how many days she had worked, which after January 17, 2021 was based on the number of hours she had worked, as well as whether she had earned over \$504 for the work, which she understood to be asking about her earnings before taxes. She has not contended that her understanding was any different for the period when she was presented with English screens which she translated using Google Translate or the form which she also translated using the application. Her certifications that she had worked zero days and had not earned over \$504 were factually false (see Appeal Board No. 613161). Accordingly, the regular unemployment insurance benefits and the extended benefits that she received are recoverable. As to the federal benefits, consistent with federal law, the FPUC, PEUC and LWA benefits that she was overpaid are automatically recoverable.

With respect to the claimant's certifications for the week ending May 3, 2020 through the week ending March 14, 2021, including the form certification on May 12, 2020 for six weeks from the week ending March 22, 2020 through the week ending April 26, 2020, the credible evidence fails to establish that the claimant made willful misrepresentations to obtain benefits. For the certifications made through the week ending March 14, 2021, the claimant was presented only with the English versions of the online certification questions and the form for certifying for the six prior weeks. It is significant that the claimant had filed her claim in Spanish and had indicated at that time that her preferred language was Spanish. Since the claimant had not been provided with the certification questions in Spanish, while her certifications during this time were factually false, we do not find that her certifications through March 14, 2021 constitute willful misrepresentations to obtain benefits.

However, with respect to the claimant's certifications for the weeks ending March 21, 2021 through September 5, 2021, the credible evidence establishes that her certifications amounted to willful misrepresentations to obtain benefits. In this regard, we find that the claimant was presented with the Spanish version of the certification questions as to the number of days worked, including where this was based on the number of hours she worked, as well as the questions asking if she had earned more than \$504 during the week. The claimant testified that she saw the Spanish version of the questions when

certifying after mid-March 2021. The Board has found that questions regarding the number of days worked, including a number of days worked based on the number of hours worked, are straightforward questions not requiring specialized knowledge to answer. Although the claimant contends that she answered these questions based on her lost employment, there is no evidence that these questions indicated that they referred to a specific employer. Likewise, as the claimant understood the earnings questions to be based on earnings before taxes, no specialized knowledge was required to respond to the question of whether her earnings were more than \$504 during the week. Her contention that she thought the question referred to the benefits she received is not supported by the question that was asked. The claimant is therefore subject to the forfeit and civil penalties based upon the certifications beginning after March 14, 2021. The amounts of the forfeit and civil penalties are referred to the Department of Labor for recalculation in accordance with this decision.

The credible evidence further establishes that the claimant was unavailable for employment during the week ending August 8, 2021. She took vacation for five days during this week and was, therefore, not available to take employment during that week. The federal benefits of FPUC and PEUC that the claimant received for that week, were overpaid and are recoverable pursuant to federal law. Even without reference to the claimant

information handbook, the claimant should have known that she was not available for employment during her week of vacation. We are not persuaded that the claimant was presented with the certification question regarding her availability for the week ending August 8, 2021 in English, as the claimant testified that beginning in mid-March 2021 she was presented with her weekly certification questions in Spanish. We, therefore, conclude that her certification that she was ready, willing and able to work during the week ending August 8, 2021 constitutes a willful misrepresentation to obtain benefits. Accordingly, as she was overpaid benefits based on this certification, she is subject to the civil penalty imposed.

**DECISION:** The decisions of the Appeal Board are rescinded.

In Appeal Board Nos. 628920 A and 628921 A, the decisions of the Administrative Law Judge filed December 5, 2022, insofar as appealed from, are affirmed.

In Appeal Board No. 628922 A, the decisions of the Administrative Law Judge filed December 5, 2022, insofar as appealed from, is modified as follows and, as so modified, is affirmed.

In Appeal Board Nos. 628923 A, 628924 A and 628925 A, the decisions of the Administrative Law Judge filed December 5, 2022, insofar as appealed from, are affirmed.

In Appeal Board Nos. 628920 A and 628921 A, the initial determinations, holding the claimant ineligible to receive benefits, effective March 16, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; and charging the claimant with an overpayment of \$10,250.00 in regular unemployment insurance benefits and \$7,790.00 in Extended (EB) benefits recoverable pursuant to Labor Law § 597

(4), Federal Pandemic Unemployment Compensation (FPUC) benefits of \$18,600.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$11,992.50 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and Lost Wages Assistance (LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), are sustained.

In Appeal Board No. 628922 A, the initial determination, reducing the claimant's right to receive future benefits by 360 effective days, as modified by the Judge to impose a forfeit penalty of 352 days, and charging a civil penalty of \$7,294.87, as modified by the Judge to impose a civil penalty to be recalculated in accordance with the decision, on the basis that the claimant made willful misrepresentations to obtain benefits, is modified to find willful misrepresentations to obtain benefits were made for the weeks ending March 21, 2021 through September 5, 2021, and, as so modified, is sustained.

In Appeal Board Nos. 628923 A, 628924 A and 628925 A, the initial determinations, holding the claimant ineligible to receive benefits, effective August 2, 2021 through August 8, 2021, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$300.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$410 recoverable pursuant to Section 2107 (e)(2) of the

Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$106.50 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

In Appeal Board No. 628922 A, the amounts of the forfeit and civil penalties are referred to the Department for recalculation in accordance with these decisions.

MICHAEL T. GREASON, MEMBER